



ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY

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November 8, 2004

REQUEST FOR PROPOSALS for Construction Manager for Implementation of Rapid Bus Corridors within Alameda County

Dear Consultant:

The Alameda County Congestion Management Agency (ACCMA) is seeking proposals from construction management firms to provide construction management services for the upcoming Rapid Bus corridors project.

The attached Request for Proposals (RFP) provides the qualifying criteria and specific requirements for the desired services. For this project RFP and the resulting contract, the ACCMA has established a **DBE goal of 2%**. A **mandatory** pre-proposal meeting will be held on **November 17, 2004, at 3:00PM** in the Alameda County CMA board room at 1333 Broadway, Suite 220, Oakland, CA.

All proposals shall be received **no later than 4:00 PM on December 1, 2004**. Failure to comply will result in disqualification. **Faxed or emailed proposals are not acceptable.**

Sincerely,

Cyrus Minoofar, P.E.
Program Manager

REQUEST FOR PROPOSALS
for
Construction Manager for
Implementation of Rapid Bus Corridors
within Alameda County

RFP A04-022

Issued by:

Alameda County Congestion Management Agency

RESPONSES DUE:

December 1, 2004 at 4:00 PM,

Alameda County Congestion Management Agency
1333 Broadway, Suite 220,
Oakland, CA 94612

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REQUEST FOR PROPOSALS
for
Construction Manager for
Implementation of Rapid Bus Corridors
within Alameda County

1.0 INTRODUCTION

The Alameda County Congestion Management Agency (ACCMA) is responsible for planning, programming, and coordination of Federal, State, and Regional funds for transportation projects within the Alameda County. Over the last few years, ACCMA has partnered with other state and local agencies and taken on additional responsibilities in the delivery of priority projects on and off the State Highway System. As part of this effort, in cooperation with AC Transit, ACCMA will be implementing Rapid Bus corridors on key AC Transit routes. For more detail about AC Transit's Rapid Bus program, please visit AC Transit's website at <http://www.actransit.org/riderinfo/sanpablo.wu>.

This project is partly funded by federal funds, and as such, it is subject to DBE requirements discussed in [section 4.0](#) of this RFP.

Due to funding requirements, this project is on a very aggressive accelerated schedule. Proposers must be able to provide adequate resources before and during construction in order to meet critical delivery dates. More details on the project schedule can be found in [section 3.4](#).

2.0 IMPLEMENTATION OF RAPID BUS CORRIDORS

2.1 Background

As part of the SMART Corridors Program, ACCMA helped AC Transit implement a Rapid Bus corridor along San Pablo Avenue from downtown Oakland to Contra Costa College in the City of San Pablo. AC Transit's San Pablo Rapid Bus, line 72R, the first of its kind in the greater San Francisco Bay Area, has been in operation since the summer of 2003. The San Pablo Rapid Bus has been a huge success with significant improvements in ridership, as well as in travel times. Because of the success of the Rapid Bus concept, AC Transit is now planning a second Rapid Bus route, and potentially, with more to follow.

2.2 Project Description

The internal working name of E. 14th St/International Blvd/Broadway/Telegraph Rapid Bus project is *INTEL Rapid Bus project*.

The INTEL Rapid Bus project will start in San Leandro at the Bayfair Mall and run along said

arterials through downtown Oakland and continue along Telegraph Avenue to the UC Berkeley campus.

In order to ensure the same success as the San Pablo Rapid Bus project, ACCMA and AC Transit are envisioning that the INTEL project will be using the same, or very similar, solution that was implemented for the San Pablo Rapid Bus project. The signal priority implementation along San Pablo is using 3M's Opticom detectors and emitters. Opticom is connected to the various traffic controller systems used along the San Pablo Avenue corridor. The signal controller systems currently in use are Caltrans' CTNET and BiTran System's QuicNet/4. It is anticipated that the same controller systems will be used along the INTEL project corridors.

2.3 Project Schedule

The project is on an accelerated schedule with the requirement that construction of the critical elements of the project, necessary for the efficient operation of the Rapid Bus, must be completed on or before June 26, 2006. It is expected that first construction bid package will be ready for advertisement by January 2005. Critical components are currently defined as everything other than ATMS elements, but may change during the course of the project. As part of the proposal, proposers should include a schedule and implementation plan necessary to meet the deadline.

2.4 Critical Project Information

To ensure timely delivery of the critical project components it is anticipated that up to three separate construction contracts will have to be issued for this project. Because several construction contracts will be active concurrently, the CM firm will have to be able to designate adequate and relevant resources to manage multiple construction contracts.

2.5 Current Project Status

ACCMA and AC Transit are in the process of finalizing the agreements for the implementation of the INTEL Rapid Bus project. The funding for the project is secured and will be a combination of federal, regional, and local funding.

A firm has recently been retained to provide system manager and design services for the project.

3.0 SERVICES TO BE PROVIDED

Initially the contract will cover the INTEL Rapid Bus project. INTEL is the working name of the project and includes the E. 14th St/International Blvd/Broadway and Telegraph/Shattuck/Oxford arterials. In the future, if AC Transit and ACCMA decide to implement additional Rapid Bus Corridors, ACCMA may elect to expand the contract to other Rapid Bus Corridors.

The ACCMA intends to retain a qualified and committed professional Construction Management

(CM) firm to be part of the ACCMA implementation team. The CM firm will manage and oversee the construction of Rapid Bus components and construction activities along the corridors. The successful CM firm shall demonstrate the availability of qualified personnel to perform construction management services for the construction and installation contract for field devices required as part of the Rapid Bus Corridors project.

3.1 Scope of Work

Among the tasks that ACCMA will require from the CM firm are, but not limited to:

1. In cooperation with ACCMA and its system manager (design consultant), the CM firm shall analyze and recommend methods and procedures to be adopted to minimize risks and any delays during construction. As part of this effort, the CM firm is expected to formulate an implementation and management plan for the construction and completion of the project in accordance with the project schedule.
2. Conduct multiple pre-bid conferences, review bids, bid bonds, insurance certificates and related submittals, and assist in the selection of qualified bidders.
3. Act as construction project coordinator and the point of contact for all communications and interaction with the contractor, Caltrans, affected local agencies and the system manager (design consultant).
4. Perform all resident engineer functions as required by Caltrans Standard Specifications, the project Special Provisions, and Caltrans Construction Manual.
5. Ensure contractors' compliance with the requirements of the state and local agencies, including encroachment permits, business licenses, regulations, etc.
6. ACCMA may elect to use "Partnering" on this project. If so, the selected CM team will be expected to participate in the partnering relationship to be developed between ACCMA, Caltrans, affected local agencies and the contractor.
7. Coordination with ACCMA's maintenance contractor on routine maintenance of existing SMART Corridor elements.
8. Conduct and participate in pre-construction conferences.
9. Perform constructability review of all PS&E documents.
10. Attend weekly project meetings with ACCMA staff and its system manager.
11. Attend monthly stakeholders' meetings to provide status updates, including preparation of PowerPoint presentations.

12. Attend and provide quarterly construction status reports at the ACCMA Board committee meetings.
13. Assist ACCMA in procuring agency-furnished items to minimize schedule and cost impacts to the project. Such items would be identified by the ACCMA system manager.
14. Coordinate and arrange for any training provided by vendors.
15. Assist ACCMA in obtaining and managing storage, control inventory, and release of materials to contractors in a secure and timely fashion.
16. Review and monitor the construction schedule. Prepare weekly reports documenting the progress of construction. Take photographs and videotape recordings of the construction progress on a regular basis.
17. Schedule, manage and perform construction staking in accordance with the methods, procedures and requirements of Caltrans Surveys Manual and Caltrans Staking Information Booklet
18. Schedule, manage, perform and document all field and laboratory testing services. Materials testing shall conform to the requirements and frequencies as defined in the Caltrans Construction Manual and the Caltrans Materials Testing Manuals.
19. Provide proactive coordination with vendors such as PG&E, SBC, and AT&T Wireless (Cingular).
20. Evaluate, negotiate, recommend, and prepare change orders.
21. Process submittals and monitor design consultant review activities.
22. Prepare and recommend progress payments.
23. Coordinate and meet construction oversight requirements of Caltrans and affected local agencies for work being performed within the respective jurisdictions.
24. Identify potential claims and make recommendations to resolve said claims.
25. Perform all construction administrative activities, including correspondence and document control as listed in ACCMA's Construction Administration Guide.
26. Perform field inspection activities, monitor contractor's performance and enforce all requirements of applicable codes, specifications, and contract drawings.
27. Oversee the design clarification process.

28. Oversee quality control and materials testing.
29. Check accuracy, add information, and provide red-line drawings based on contractor's furnished information. Record drawings shall be provided to the systems manager for preparation of as-built drawings.
30. As required, provide coordination and review of contractor's detours and staging plans with Caltrans, engineering consultant, affected businesses, and local agencies.
31. Provide final inspection services and project closeout activities, including preparation of the final construction project report, and filing of the notice of completions as necessary.
32. Turn all construction documents over to the CMA.

3.2 Contract Requirements

All persons furnished by the consultant shall be its employees or agents subject to its supervision and control, and not ACCMA or Caltrans employees or agents. Consultant personnel shall perform services in accordance with applicable Caltrans, FHWA and the ACCMA Construction Contract Administration Guide criteria and guidelines and are subject to the following general requirements:

- All reports, calculations, measurements, test data and other documentation shall be prepared on forms specified by or otherwise acceptable to Caltrans and/or the ACCMA.
- Daily reports, extra work diaries, materials testing reports, and other reports shall be submitted in compliance with the Caltrans Construction Manual or other Caltrans procedures.
- Consultant shall provide for all transportation and communication requirements for the consultant's personnel.

4.0 DBE REQUIREMENTS

The ACCMA has adopted a DBE program with the intention to encourage participation of disadvantaged business enterprises. Consistent with this program, the ACCMA has established a DBE participation goal of 2% for the services to be provided for the Construction Manager contract. For DBE instructions and forms please see [Attachment A](#) in section 9.1 of this RFP. Please note that the attached DBE forms must be filled out and included in an appendix of your firm's proposal. Firms whose proposals fail to meet the established DBE goal must demonstrate in writing what efforts they have made to locate DBE firms. *The ACCMA has the right to deem a proposal as non-responsive if this participation goal has not been met, and documentation demonstrating a good faith effort is judged inadequate.*

5.0 PROPOSAL SUBMITTAL REQUIREMENTS

Please prepare your proposal in accordance with the following requirements:

5.1 Proposal

The proposal (excluding resumes and the transmittal letter) shall not exceed a total of the equivalent of 35 single-sided, 8.5" x 11" pages. Resumes should be included in an appendix.

5.2 Transmittal Letter

The proposal shall be transmitted with a cover letter describing the firm/team's interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and should include the name, title, address, email, and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process. The person authorized by the firm/team to negotiate a contract with ACCMA shall sign the cover letter.

Address the cover letter as follows:

Cyrus Minoofar, P.E.
Principal Transportation Engineer
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

5.3 Project Understanding

This section should clearly convey consultant's understanding of the nature of the work, including coordination with and approvals from ACCMA, AC Transit, and any other affected agency.

5.4 Approach and Management Plan

This section should provide the firm's/team's proposed approach and management plan for providing services. Include an organization chart showing the proposed relationships among consultant staff and ACCMA staff, as well as any other parties that may have a significant role in the delivery of this project.

5.5 Qualifications and Experience

The proposal should provide the qualifications and experience of the consultant team that will be available for the. Please emphasize the specific qualifications and experience from projects

similar to this project for the key team members, including construction manager, inspectors, and project control personnel. Specifically identify experience of the construction manager and inspectors as related to electrical systems, Intelligent Transportation Systems and preemption equipment installation. Key team members are expected to be committed for the duration of the project. Replacement of any key team member will not be permitted without prior consultation with, and approval of, the ACCMA.

5.6 Staffing Plan

The proposal should provide a staffing plan (by quarter) and an estimate of the **total hours** (detailed by position) required to complete the scope of work included in [section 2.1](#) above, as well as a summary of the hours by task and the overall project. Discuss the workload, both current and anticipated, for all key team members, and their capacity to perform the requested services according to your proposed schedule. Discuss the firm/team's approach for completing the services required for this project within budget, and to meet the completion deadlines. Identify construction manager and inspectors assigned to the project. Discuss how you plan to administer up to three construction contracts during the course of the project. How would the construction manager and inspectors time be divided between each construction activity?

5.7 Work Plan and Schedule

This section should include a description of how each task of the project will be conducted, identification of deliverables for each task and subtask, as well as an implementation schedule. The work plan should include sufficient detail to demonstrate a clear understanding of the project. Discuss the firm/team's approach for completing the project (as well as providing other design support services that may be requested for this project).

The schedule or schedules should support the preliminary schedule discussed in [section 3.3.1](#) above.

5.8 Additional Relevant Information

Provide additional relevant information that may be helpful in the selection process (not to exceed the equivalent of 2 single-sided pages).

5.9 References

For each key team member, provide at least three references (names and current phone numbers) from recent work (previous three years) similar or relevant to the Rapid Bus project. Include a brief description of each project associated with the reference, and the role of the respective team member.

5.10 DBE Forms

The DBE Forms ([Attachment A](#)) must be filled out and included in an appendix of your firm's

proposal. If your firm cannot meet the DBE goal, you must demonstrate in writing your good faith effort by submitting the DBE Good Faith Effort Forms.

5.11 Submittal of Proposals

Ten (10) copies of your proposal are due at the ACCMA offices no later than the time and date specified in [section 7.0](#) below. Envelopes or packages containing the proposals should be clearly marked, “**Proposals Enclosed.**”

6.0 SELECTION OF CONSULTANT

The overall process will be to evaluate the technical components of all the proposals completely and independently. The proposals will be evaluated based on the following criteria:

1. Qualifications and specific experience of key team members.
2. Project understanding and approach, including an understanding of ACCMA, AC Transit, and other agency review, approval and coordination processes.
3. Experience with similar types of projects.
4. Satisfaction of previous clients.
5. Schedule and capacity to provide qualified personnel.

Two or more of the firms/teams may be invited for interviews. The project manager and key team members should attend the interview. The evaluation/interview panel may include representatives from ACCMA, AC Transit, and other agencies, but the specific composition of the panel will not be revealed prior to the interviews. Costs for travel expenses and proposal preparation shall be borne by the consultants.

Once the top firm/team has been determined, ACCMA staff will start contract negotiations with firm/team. If contract negotiations are not successful, the second ranked firm/team may be asked to negotiate a contract with ACCMA, and so on. Provided negotiations are proceeding well, ACCMA may elect to initiate a portion of the work scope with a Notice to Proceed (NTP), prior to execution of the contract.

7.0 SELECTION PROCESS DATES

<i>Date</i>	<i>Time</i>	<i>Activity</i>
November 17, 2004	3:00 PM	Pre-proposal meeting at ACCMA.
November 22, 2004	5:00 PM	Deadline for submitting questions.
December 1, 2004	4:00 PM	Proposals due at: Alameda County Congestion Management Agency 1333 Broadway, Suite 220 Oakland, CA 94612 <i>Late submittals will not be accepted.</i>
December 8, 2004	9:00 AM – 4:00 PM	Tentative date for consultant selection interviews. (If needed.)

If you have any questions regarding this RFP, please contact:

Cyrus Minoofar, P.E.
Principal Transportation Engineer, ACCMA
Phone (510) 836-2560
Fax (510) 836-2185
cminoofar@accma.ca.gov

8.0 GENERAL CONDITIONS

A. Limitations

This RFP does not commit the Alameda County CMA to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Rejection of Proposals

The Alameda County CMA reserves the right to reject any or all proposals.

C. Award

All finalists may be required to participate in negotiations and to submit such price; technical or other revisions of their proposals as may result from negotiations. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical viewpoint.

D. Work Scope Modifications

The Alameda County CMA reserves the right to request changes to the staffing and/or scope of services contained in any of the proposals and to enter negotiations with any of the proposers regarding their submittal.

E. Contract

A sample contract is shown in [Attachment C](#). It is expected that the terms of the contract will be acceptable to the consultant.

F. Non - Discrimination

Contractors shall not discriminate on the basis of race, color, national origin, sex, or physical disability in the performance of ACCMA contracts

G. Levine Act

Selected consultants will be required to disclose on the record any contribution of more than \$250.00 which they have made to an ACCMA Board member within the twelve-month period preceding the submittal deadline of this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to ACCMA's Executive Director, Dennis Fay. This information will need to be provided before the ACCMA can approve any contract

9.0 ATTACHMENTS

The following documentation is attached:

9.1 Attachment A - DBE Forms and Instructions

9.2 Attachment B - List of Firms That Received This RFP

9.3 Attachment C - Sample Contract

Attachment A

ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY

DISADVANTAGED BUSINESS ENTERPRISE

INSTRUCTIONS AND FORMS

I. SUBMISSION OF DBE INFORMATION

The required DBE information shall be submitted on the DBE Utilization form attached.

This project is funded in whole or in part by the US Department of Transportation (USDOT). Therefore this project is subject to USDOT DBE regulations.

If the DBE goal is not met, the bidder/proposer's DBE information shall establish that good faith efforts to meet the DBE goal have been made. To establish good faith efforts, the bidder shall demonstrate that the goal will be met or, that prior to bidding, adequate good faith efforts to meet the goal were made. Final determination of goal attainment or good faith effort by the bidder or proposer will be at the Agency's discretion.

Bidders/proposers are cautioned that even though their submittal indicates they will meet the stated DBE goal, they should follow and document the good faith effort requirements listed below. This will protect their eligibility for award of the contract in the event the Agency, in its review, finds that the goal has not been met. It is the responsibility of the Contractor to verify that DBEs are certified.

A. DBE INFORMATION

The Bidders/proposers DBE information shall include:

1. Names of DBE firms that will participate in the contract including a complete description of work or supplies to be provided by each DBE and the dollar value of each proposed DBE transaction.
2. Proof of DBE certification for each company used towards meeting the goal.
3. A DBE joint venture must submit the joint venture agreement with their DBE Information

B. GOOD FAITH EFFORT

Good Faith Effort Criteria.

A Prime Contractor shall provide evidence of the extent to which it took the following actions to establish that it made a reasonable Good Faith Effort to meet the CMA's applicable DBE Contract Goal:

1. Attend pre-bid meetings scheduled by the CMA to inform all bidders of the DBE Program requirements applicable to the project.

2. Identify specific items of work to be performed by DBEs to increase the likelihood of meeting the DBE Goal, including breaking down contracts into constructable units. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation.
3. Provide written notice of interest in soliciting bids on the contract to DBEs. Written notice shall specify which items of work the Prime Contractor has identified pursuant to paragraph 2. This notice shall be provided to DBEs not less than 10 calendar days prior to the opening of Bids, or pursuant to the notice period set forth in the specifications for a given Contract. These solicitations shall include a description of the specific items of work to be performed by the DBEs and all related conditions of the work. The CMA shall make the Directory available to the bidders not less than 15 days prior to the date the Bids are opened.
4. Follow up the written initial solicitations of interest by contacting the owner or other manager of the DBEs to determine with certainty whether the enterprises were interested in performing specific items of the project.
5. Make the project plans, specifications, and requirements for the selected subcontracting or material supply work available for review by interested DBEs.
6. Where needed, advise and make efforts to assist interested DBEs in obtaining lines of credit, or required insurance.
7. Negotiate in good faith with DBEs and, as determined by the CMA, not unjustifiably reject as unsatisfactory bids prepared by any DBE.
8. Contact the CMA, identifying the DBEs contacted and explaining any problems securing DBE bidders at least five (5) working days before Bid opening.
9. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. A potential Subcontractor's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Prime Contractor's efforts to meet the Contract Goal.
10. Advertise, not less than ten (10) calendar days before the date the Bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, that may be specified by the CMA to solicit DBEs that are interested in participating in the project. This paragraph applies only if the CMA provides public notice of the project not less than 15 calendar days prior to the date the Bids are opened.
11. Request assistance from minority and women's community organizations, contractors' groups, local, state, or federal minority and women business

assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs, if any are available.

12. Make any other efforts to obtain DBE Participation that the CMA could reasonably expect would produce a level of participation sufficient to meet the CMA's Goal and requirements.

Prime Contractors not meeting the DBE Goal for participation will demonstrate in their Bid documents that they used Good Faith Efforts to utilize DBE Subcontractors, suppliers, manufacturers, brokers, truckers or owner/operators of equipment. Before noon of the first working day following the date the Bid was submitted, contractors who have not met the Goal will submit a Good Faith Effort Report. The Prime Contractor will list on the report the names of all DBEs contacted by the Prime Contractor to solicit their Bids; the name and title of the person contacted; the date contact was made; and the dates of all follow-up contacts. The Prime Contractors will also identify specifically the selected items of work for which Bids from DBEs were requested; the dates plans and specifications were made available to the DBEs; the technical assistance offered the DBEs; and the reason the bid was rejected. Prime Contractors will attach all letters and other documents relating to their efforts to comply with the Good Faith Effort requirements to solicit DBE Participation.

To determine whether a Prime Contractor has made good faith efforts, the CMA may take into account the performance of other bidders in meeting the DBE Goal of the Contract. For example, when the apparent successful Prime Contractor fails to meet the contract Goal, but others meet it, the CMA may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Prime Contractor could have met the Goal. If the apparent successful Prime Contractor fails to meet the Goal, but meets or exceeds the average DBE participation obtained by other bidders, the CMA may view this, in conjunction with other factors, as evidence that the apparent successful Prime Contractor made good faith efforts.

The CMA recognizes that a bidder using good business judgment would consider a number of factors in negotiating with Subcontractors, including DBEs, and would take a firm's price, capabilities and contract Goal into consideration. However, additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the Contract DBE Goal, as long as such costs are reasonable. Also, the ability or desire of a Prime Contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

Good Faith Effort Review.

If a Prime Contractor has not met the applicable DBE Goal, the CMA shall investigate whether the Prime Contractor made a Good Faith Effort to meet the DBE Goal and shall recommend to the CMA's Board whether the Bid should be accepted or rejected. In its investigation, the CMA may contact the DBEs listed on the Good Faith Effort Report to

verify the information provided by the Prime Contractor. The Prime Contractor will also provide further documentation regarding its efforts to attain DBE Participation as requested by the CMA.

Whenever the CMA recommends rejection of a Bid that has not met the DBE Goal, the Prime Contractor may appeal the rejection of its Bid to a Good Faith Effort Review Committee (“Committee”) assembled for this purpose by the CMA. The Committee will review the CMA’s decision to award a contract based on Good Faith Effort when the DBE Goal is not met. The Committee shall consist of three (3) members appointed by the Chair of the CMA Board and shall include at least one CMA staff member, and at least one CMA Board representative.

The Committee shall hold a hearing in Alameda County. All Subcontractors listed on the Good Faith Report will be given notice of the hearing at least ten (10) days before it takes place. The Committee will review evidence at the hearing to determine whether the Prime Contractor made a Good Faith Effort to meet the DBE Goal. The Committee shall review and keep confidential any information revealing a Prime Contractor’s proprietary interests and shall exclude the public from the hearing for that limited purpose. The Committee shall give the bidders and Subcontractors participating in bids on the project an opportunity to present evidence relating to the Prime Contractor’s Good Faith Effort to meet the DBE Goal.

The Committee’s decision on the Prime Contractor’s Good Faith Effort is final and binding on the CMA. The Prime Contractor will receive a written decision on reconsideration, explaining the basis for finding that the Prime Contractor did or did not meet the Goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to DOT.

II. DBE PARTICIPATION REQUIREMENTS

A. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

1. Certified DBEs are socially and economically disadvantaged individuals who are citizens of the United States and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be socially and economically disadvantaged pursuant to the federal Small Business Administration regulations.
2. In order to be considered a responsible and responsive bidder, A bidder/proposer must make good faith efforts to meet the goal established for the contract. The bidder/proposer can meet this requirement in one of two ways:
 - a. Meet the goal and document commitments for participation by DBE firms; or

- b. If the goal is not met, the bidder/proposer must document adequate good faith efforts.
- 3. A bidder/proposer will be required to document one or a combination of the following:
 - a. The bidder/proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - b. Prior to bidding the bidder/proposer made an adequate good faith effort to meet the goal.
- 4. A certified DBE may participate as a subcontractor, joint venture partner, as a vendor of material or supplies or as a trucking company.
- 5. A certified DBE bidder/proposer not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - a. The bidder/proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - b. The bidder/proposer prior to bidding, made an adequate good faith effort to meet the goal.
- 6. A DBE joint venture partner must be responsible for specific contract items of work, or portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces.
- 7. The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The DBE joint venture must submit the joint venture agreement with the DBE information form attached to these instructions.
- 8. Pursuant to Section 26.55, 49 CFR Part 26., a DBE must perform a commercially useful function, i.e. the DBE must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work involved. To perform a commercially useful function the DBE must also be responsible with respect to materials and supplies to be used on the contract for negotiating price, determining quality and quantity, installing, where applicable) and paying for the material itself.
- 9. DBEs must be certified by either the California Agency of Transportation, or by a participating State of California or local agency which has a reciprocal agreement with Caltrans, in conformance with 49 CFR Part 26, by the Invitation for Bid (IFB) bid opening date or by the Request for Proposal (RFP) before credit may be

considered toward meeting the DBE goal. It is the Contractor's responsibility to verify that DBEs are certified.

10. Listing of certified DBEs certified are available from the following sources:
 - a. The California Department of Transportation's web site:
<http://www.dot.ca.gov/hq/bep/>
 - b. The Bay Area Rapid Transit web site:
<http://www.bart.gov/about/business/OCRDatabase.asp>
11. Any dollar amount or percentage of work, service or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.
12. If the bidder/proposer documents an adequate good faith effort to meet the goal, the award cannot be denied on the basis that the bidder/proposer failed to meet the goal.

B. PENALTIES AND SANCTIONS

When the CMA awards a contract and has cause to believe that any Prime Contractor or Subcontractor has willfully failed to comply with any provisions of this DBE Program or, if the CMA has reason to believe that an organization committed fraudulent acts in representing that it is a DBE, the CMA may conduct an investigation. If, based on this investigation the CMA finds noncompliance or fraud, it will provide the Prime Contractor or Subcontractor with notice and an opportunity to be heard. Thereafter, the CMA may either impose the sanctions described below for such a violation of this DBE Program, report such organizations to the appropriate government authorities, or may do both.

To complete its investigation, the CMA may require such reports, information and documentation from Prime Contractors and Subcontractors as are reasonably necessary to determine compliance with the requirements of this DBE Program. Willful failure to comply with requests for such reports, information and or documentation shall be a basis for determining that the Prime Contractor committed bad faith noncompliance.

Possible sanctions imposed for each violation of this DBE Program are as follows:

- Suspend the contract;
- Terminate the contract based upon a material breach of contract pertaining to DBE utilization; or

- Disqualify a bidder, contractor, or other business from eligibility for providing goods or services to the CMA on non-DOT funded projects for a period not to exceed two years.

B. CREDIT FOR MATERIALS AND SUPPLIES

Credit for materials or supplies purchased from DBEs is as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on its premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
3. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward the DBE goal.
4. A DBE dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
5. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products.
6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease agreement and not on an ad-hoc or contract-by-contract basis.
7. Packagers, brokers, manufacturers' representative, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
8. Credit for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement of the materials and

supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of materials or supplies are not counted toward the DBE goal in this instance.

C. CREDIT FOR DBE TRUCKING COMPANIES

Credit for DBE trucking companies is as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. There cannot be a contrived arrangement for the purpose of meeting the DBE goal.
2. The DBE itself must own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE will receive credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.
5. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from being used by others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

D. DBE SUBCONTRACTOR SUBSTITUTION

If awarded the contract(s), the successful bidder must use the DBE subcontractor(s) and or supplier(s) proposed in its bid/proposal.

The Contractor may not substitute, add or terminate a subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of the CMA.

The Contractor must make an adequate good faith effort to find another certified DBE subcontractor to substitute for the original DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was substituted or terminated to the extent needed to meet the contract goal established for the contract.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the contract. Substitutions of DBEs after award must be certified at the time of the substitution or addition.

Authorization to use other subcontractors or suppliers may be requested for the following reasons:

1. The listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions for this contract or on the terms of such subcontractor's or supplier's written bid, is presented by the Contractor.
2. The listed DBE becomes bankrupt or insolvent.
3. The listed DBE fails or refuses to perform the subcontract or furnish the listed materials.
4. The listed DBE subcontractor fails or refuses to meet the bond requirements of the Contractor.
5. The listed DBE performs work that is substantially unsatisfactory and is not in substantial conformance with the scope of work to be performed, or the subcontractor substantially delays or disrupts the progress of the work.
6. When it would be in the best interest of the State

Alameda County Congestion Management Agency
PROPOSER DBE UTILIZATION FORM
Page 1 of 1

PROPOSER BUSINESS NAME		PROPOSER BUSINESS ADDRESS				
NAME OF PERSON SUBMITTING BID .		SIGNATURE OF PROPOSER				
CONTACT PERSON .		BUSINESS PHONE				DATE
IMPORTANT: 1) Identify all DBE firms being claimed for credit. 2) List names of all DBE subcontractors and their respective items of work. 3) Attach a copy of the proof of DBE certification for each subcontractor listed on this form. 4) Attach "Intent to Perform" letter signed by the subcontractor.						
LIST DBE BUSINESS FIRM(s)	Telephone Number (Area Code)	Service provided	DBE Certifying Agency	Ethnicity of Owner*	Gender M/F	Percentage of Contract Participation
A PRIME Proposer Participation						
B. DBE Subcontractor/Supplier Name and Address						
TOTAL PARTICIPATION CLAIMED						%

***Ethnicity of Ownership:** (1) Black (2) Hispanic (3) Native American (4) Pacific Asian (5) Asian Indian (6) Caucasian
 DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://www.dot.ca.gov/hq/bep/ucp.html> for a list of participating agencies. **Important:** Attach the proof of certification for each DBE firm used toward meeting the DBE goal.
 Use additional sheets as necessary.

Submittal of only the Proposer DBE Information form may not provide sufficient documentation to demonstrate that an adequate good faith effort was made. Proposers who claim goal attainment should always be prepared to submit all documentation for making a “good faith effort” upon request. This will protect the proposer’s eligibility for award should the CMA, in its review, find that the goal was not met. Some examples of failing to meet the goals are: 1) DBE subcontractor was not certified by Caltrans or a participating agency, which has a reciprocal agreement with Caltrans, by the bid/proposal due date or 2) proposer made a mathematical error resulting in failure to meet the goal.

Proposers shall submit the requested information below when applying for a determination of a good faith effort when DBE contract goals are not attained or when only partial goal(s) have been attained. Use additional sheets where necessary.

1. ADVERTISEMENT DOCUMENTATION

List names and dates of each general circulation newspaper, trade paper and minority focused paper or other publication in which a request for DBE participation was placed. Attach a copy of the advertisements or proofs of publication.

Publication’s Name	Publication Date(s)

2. DBE SOLICITATION DOCUMENTATION

- List the names and dates of written notices sent to certified DBEs soliciting bids for the contract.
- List the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.
- Attach a copy of any solicitation package, phone records, fax confirmations or solicitation follow-up correspondence sent to DBE firms.
- Identify information submitted to the proposer for this solicitation:

[illegible]

3. ITEMS OF WORK

Identify the items of work which were made available to DBE firms, including, where appropriate, any breakdown of the contract work into economically feasible units to facilitate DBE participation. It is the proposer’s responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work:
Breakdown of Items:

4. DBE RESPONSES

List the DBE firms that responded or submitted bids/proposals to your solicitation for participation in this contract which were not accepted. Provide a summary of your discussions and/or negotiations with them, the name of the firm selected for that portion of work and the reasons for your choice. Attach copies of quotes from firms contacted.

FIRM NAME	PHONE NUMBER	RESPONDED		SELECTED		Give reason for non-selection and a summary of discussions.
		Yes	No	Yes	No	

5. ASSISTANCE TO DBEs - Financing, insurance, etc.
Identify efforts to assist DBEs in obtaining financing, lines of credit or insurance, and any technical assistance related to requirements for the work or for plans and specifications provided to DBEs.

6. ADDITONAL DATA

Provide any additional data to support a demonstration of good faith efforts such as contacts with DBE assistance agencies. Identify the names of agencies, organizations or groups providing assistance in contacting, recruiting and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet pages, etc.

NAME OF AGENCY/ORGANIZATION	METHOD/DATE OF CONTACT	RESULTS

NOTE: Please use additional sheets of paper if necessary.

Attachment B

List Of Firms That This RFP Was Sent To

Company	Address	City	State	ZIP
A.C.E.	1495 Revere Avenue	San Francisco	CA	94124
A/E Consultants Information Network	P.O. Box 417816	Sacramento	CA	95841
Ackland International, Inc.	333 Hegenberger Road, Suite 511	Oakland	CA	94621
AGS, Inc.	111 New Montgomery Street, Suite 500	San Francisco	CA	94105
Anil Verma Associates Inc.	444 So. Flower Street, Suite 1688	Los Angeles	CA	90071
Arcost GPM Group	519 17th Street, Suite 540	Oakland	CA	94612
Azari Engineering, Inc.	5356 Clayton Rd. #201	Concord	CA	94521
Berryman & Henigar	6150 Stoneridge Mall Road, Suite 370	Pleasanton	CA	94588
Biggs Cardosa Associates	1871 The Alameda, Suite 200	San Jose	CA	95126
BKF Engineers	540 Price Avenue	Redwood City	CA	94063
Boyle Engineering Corp.	100 Howe Ave. #250 N	Sacramento	CA	95825
Carter & Burgess, Inc.	1000 Broadway, Suite 612	Oakland	CA	94607
CCCM, Inc.	1700 North Broadway Suite 403	Walnut Creek	CA	94596
CCTC, Inc.	1799 Tice Valley Blvd.	Walnut Creek	CA	94595
CH2M Hill	155 Grand Avenue, Suite 1000	Oakland	CA	94612
Chaudhary & Associates, Inc.	3272 Villa Lane	Napa	CA	94558
Chaves & Associates	One Hallidie Plaza, Suite 401	San Francisco	CA	94102
Critical Solutions	171 Mayhew Way, #207	Pleasant Hills	CA	94523
Culver Group	6580 Regional Street, Suite 210	Dublin	CA	94568
David Evans and Associates, Inc.	5000 Executive Parkway, Ste.125	San Ramon	CA	94583
DeYoung Construction Management, Inc.	831 Bay Avenue Suite 2A	Capitola	CA	95010
D'Jame Pacific	1504 Franklin Street, Ste. 100B	Oakland	CA	94612
DMJM + Harris	1330 Broadway, Suite 1001	Oakland	CA	94612
Dugan & Associates	6350 Laurel Canyon Blvd. #406	North Hollywood	CA	91606
EarthTech	2101 Webster Street, Suite 1000	Oakland	CA	94612
EPC Consultants, Inc.	655 Davis Street	San Francisco	CA	94111
F.E. Jordan Associates, Inc.	90 New Montgomery Street Suite 1320	San Francisco	CA	94105
FaciliCorp	595 Park Avenue, Suite. 103	San Jose	CA	95110
GAIA Consulting, Inc.	3000 Citrus Circle, Suite 111	Walnut Creek	CA	94598
Geotopo	1611 Telegraph Avenue, Suite 488	Oakland	CA	94612
Ghirardelli Associates	1970 Broadway, Suite 920	Oakland	CA	94612

Company	Address	City	State	ZIP
Ghirardelli Engineering	1067 Market Street, #1024	San Francisco	CA	94103
Global Materials Handling	P.O. Box 51	Clayton	CA	94517
Harris & Associates	120 Mason Circle	Concord	CA	94520
Harrison Engineering	562 Little Lane	Pleasant Hills	CA	94523
HDR	271 Turnpike Drive	Folsom	CA	95630
HNTB	1330 Broadway, Suite 1630	Oakland	CA	94612
Holmes & Narver	1330 Broadway, Suite 1001	Oakland	CA	94612
IMS	945 Hornblend Street, Suite G	San Diego	CA	92109
Inspection Services, Inc.	Pier 26	San Francisco	CA	94105
Jacobs/Sverdrup Civil, Inc.	1340 Treat Blvd., Suite 208	Walnut Creek	CA	94596
JMEC Engineering, Inc.	2975 Treat Blvd., Suite B2	Concord	CA	94518
KJM & Associates	1390 Willow Pass Road	Concord	CA	94520
Kleinfelder, Inc.	7133 Koll Center Parkway, Ste. #100	Pleasanton	CA	94566
Luster Construction Management	P.O. Box 58	Oakland	CA	94604
Mariscal & Associates, Inc.	5515 Doyle Street, Suite 5	Emeryville	CA	94608
McGill Martin Self, Inc.	1500 Newell Avenue, Suite 700	Walnut Creek	CA	94596
Mendoza & Associates	505 Beach Street, Ste. 205	San Francisco	CA	94133
Montgomery Watson	1340 Treat Blvd., Suite 300	Walnut Creek	CA	94596
MSE Group	900 Murmansk Street, Suite 3	Oakland	CA	94607
Ninyo & Moore	675 Hegenberger Road, Suite 220	Oakland	CA	94621
O'Brien-Kreitzberg	50 Fremont Street, 24th Floor	San Francisco	CA	94105
Odell Robertson Consulting	326 Pala Avenue	Piedmont	CA	94611
Pacific Project Management	2750 60th Avenue S.E.	Mercer Island	WA	98040
Parsons Brinckerhoff Construction Services	3260 Lone Tree Way, Suite 104	Antioch	CA	94509
Parsons Transportation Group	120 Howard Street, Ste. 850	San Francisco	CA	94105
Pegasus Engineering	726 23rd Avenue	San Francisco	CA	94121
Playatec, Inc.	1860 El Camino Real	Burlingame	CA	94010
Powell Enterprises	2 Embarcadero Center, Suite 200	San Francisco	CA	94111
PSC Associates, Inc.	1185 Terra Bella	Mountain View	CA	94043
Quincy Engineering, Inc.	3247 Ramos Circle	Sacramento	CA	95827
Raytheon Engineers & Constructors	4235 Forcum Avenue, Suite #100	McClellan	CA	95652
S&C Engineers, Inc.	111 Broadway, Ste. 300	Oakland	CA	94607
Salaber Associates, Inc.	180 South First Street, Suite 10	Dixon	CA	95620

Company	Address	City	State	ZIP
Santina & Thompson, Inc.	1355 Willow Way Suite 280	Concord	CA	94520
SjR Contract Consultants	2843 Emerald Drive	Walnut Creek	CA	94596
Sverdrup Civil, Inc.	1340 Treat Blvd., Suite 208	Walnut Creek	CA	94596
Swinerton Management & Consulting	4055 Nelson Avenue	Concord	CA	94520
SYSTRA Consulting, Inc.	760 Market Street, Suite 320	San Francisco	CA	94102
Telamon Engineering Consultant	445 Grant Avenue, Suite 600	San Francisco	CA	94108
Tetra Tech, Inc.	3875 Hopyard, Suite 245	Pleasanton	CA	94588
The Allen Group, LLC	5638 Martin Luther King Jr. Way	Oakland	CA	94609
The Covello Group	43 Quail Court, Suite 111	Walnut Creek	CA	94596
The Realty Group	2001 Fillmore Street, Suite 201	San Francisco	CA	94115
The Solis Group	234 North El Molino Avenue, Suite 202	Pasadena	CA	91101
The Zahn Group, Inc.	220 Montgomery Street, Suite 406	San Francisco	CA	94104
TRS Consultants, Inc.	5000 Executive Parkway, Suite 390	San Ramon	CA	94583
Urban MicroSystems	2951 Florida Street	Oakland	CA	94602
URS Corporation	500 12th Street, Suite 200	Oakland	CA	94607
Vali Cooper & Associates, Inc.	41 Washington Avenue	Point Richmond	CA	94801
Vanir	980 Ninth Street, Suite 900	Sacramento	CA	95814
Washington Infrastructure Services, Inc.	2633 Camino Ramon, Suite 450	San Ramon	CA	94583
Wendy Lopez & Associates	1825 Market Center Blvd.	Dallas	TX	75027
Willdan Associates	609 Gregory Lane, Suite 200	Pleasant Hills	CA	94523
William Kanemoto & Associates	6428 Hillegass Ave.	Oakland	CA	94618

Attachment C

AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

This AGREEMENT is made and entered into as of the latest date appearing on the signature page below, by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY, a joint powers agency (“CMA”) and _____ /a _____ (state) _____ corporation/ /a _____ (state) _____ partnership/ /a _____ (state) _____ limited liability company/ /a sole proprietorship/, with a place of business at _____, _____ (City) _____, CA (“CONSULTANT”).

RECITALS

WHEREAS, CMA has defined and developed the _____
_____ *[describe*
project] (“PROJECT”);

WHEREAS, CMA desires to secure *[professional services / describe]* necessary for said PROJECT; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services;

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CMA hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to

diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I

A. GENERAL.

1. The PROJECT. The PROJECT which is the subject of this AGREEMENT is more particularly described in **Appendix A**, “Detailed Scope of Work,” attached hereto and by this reference incorporated herein.

2. Scope of Services. Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in **Appendix A**, as further defined in **Appendix D**, “Project Cost Proposal,” attached hereto and by this reference incorporated herein.

3. Term. The term of the AGREEMENT shall be from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work, to the satisfaction of CMA as evidenced by the Notice of Final Acceptance unless terminated earlier pursuant to **Article I, Section B**, below.

4. Compensation.

a. Compensation by CMA to CONSULTANT will be on the cost basis set forth in **Appendix D**.

b. Total compensation for services to be performed under this AGREEMENT will not exceed \$ _____, including Direct Expenses but excluding taxes, and CONSULTANT shall not be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing.

c. The aggregate amount was computed based on **Appendices A and D**.

5. CMA’s Representative. CMA hereby designates its Executive Director to be its representative in administering all matters relative to the AGREEMENT. CMA’s Representative may delegate authority for specific matters to other staff members or other consultants.

6. CONSULTANT's Representative. CONSULTANT hereby designates

_____ to represent CONSULTANT with full authority under the AGREEMENT.

7. CONSULTANT's Identity and Personnel. _____ will be the key person for the performance of services under this AGREEMENT.

CONSULTANT is the prime consultant heading a team that includes multiple subconsultant firms. The identity of the firms, their respective areas of responsibility and the key personnel who will work on the PROJECT are identified on **Appendix B**, "Key Project Personnel," attached hereto and by this reference incorporated herein. Any significant change in responsibilities among such firms, any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), and any change in key personnel may be made only upon prior written approval by CMA.

CONSULTANT and its subconsultants shall notify CMA of any proposed change of ownership or fundamental structure, respectively, in CONSULTANT's firm or any subconsultants' firm. Within 30 days of such notice, CMA shall notify CONSULTANT whether CMA will approve such changed firm to continue providing services under this AGREEMENT or whether CMA will terminate this AGREEMENT or require a substitution of a subconsultant firm. Nothing in this provision shall be construed to limit CMA's right to terminate this AGREEMENT for cause or without cause as set forth in **Article I, Section B** of this AGREEMENT.

Subcontracts between CONSULTANT and other team member firms and between team member firms and other lower tier subconsultants will be subject to review and approval of CMA's representative.

8. Preliminary Review of Work. Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CMA as products of the work described in the Scope of Work, these shall be submitted in draft form, and CMA shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

9. Appearance at Hearings. If and when required by CMA, CONSULTANT shall render assistance at public meetings and hearings to perform its services under the AGREEMENT as may be deemed necessary by CMA.

10. Responsibility of CONSULTANT. CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CMA's review, acceptance, nor payment for any of the services required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CMA in accordance with applicable law for all damages to CMA caused by CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

11. Inspection of Work. It is understood that authorized representatives of CMA may inspect or review CONSULTANT's work in progress at any reasonable time.

12. Suspension, Delay or Interruption of Work. CMA may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CMA. In the event of such suspension, delay, or interruption by CMA or of Excusable Delays as defined in **Article II, Section C**, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

13. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than CMA and CONSULTANT and has no third-party beneficiaries.

14. Legal Action. All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

15. Survival of Indemnities. Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT's obligations of indemnity set forth in **Article I, Section F** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, paragraph 10** and **Article I, Section F** of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

16. Jurisdiction. The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. Severability and Survival. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Arbitration. All claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof shall be resolved by final, binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this AGREEMENT, except that the parties may mutually agree to a different alternative dispute resolution mechanism by jointly executing an agreement in writing describing such alternative mechanism. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. If either party refuses or fails to participate in naming an arbitrator or in the arbitration itself, the arbitrator named by the American Arbitration Association or the other party is hereby authorized to decide the dispute based upon the information presented to him/her. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration, but shall not have been employed by a party for at least five (5) years prior to the arbitration proceeding. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the City of Oakland, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of competent jurisdiction. The parties shall each be responsible for one-half of the arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege for attorneys that could otherwise be claimed by a party shall be available to and may

be claimed by such party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this **paragraph 18**. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

19. Attorneys' Fees. Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party as determined by a court or an arbitrator shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

20. Final Acceptance. When CMA determines in its reasonable discretion that CONSULTANT has satisfactorily completed the Scope of Services, CMA shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination when, in its opinion, it has satisfactorily completed the Scope of Services, and if so requested, CMA shall make this determination within three weeks of such request.

21.

22. Subcontracts. Subcontracts between CONSULTANT and other team firms and between team members firm and other lower tier subconsultants will be subject to review and approval of CMA's representative. Any such subcontracts in excess of \$25,000.00 shall contain all provisions stipulated in this AGREEMENT as applicable to subconsultants.

23. The services described in the Schedule of Work shall be completed on or before _____, unless such date is extended by mutual agreement of the parties.

B. TERMINATION/CANCELLATION.

1. For Convenience. CMA may terminate this AGREEMENT. If CMA terminates the AGREEMENT for the convenience of CMA, CMA shall give CONSULTANT seven (7) days prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CMA shall pay CONSULTANT the allowable costs incurred prior to termination, and other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

2. For Cause. If CONSULTANT fails to fulfill its obligations under this AGREEMENT and CMA decides to terminate this AGREEMENT accordingly, CMA shall give CONSULTANT seven (7) days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CMA may immediately thereafter exercise its right of termination.

3. Damages/Compensation. If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CMA, and for services performed to the date of termination, including a prorated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CMA may take over the work and prosecute the same to completion by contract or otherwise, and CONSULTANT shall be liable to CMA for reasonable costs incurred by CMA in making necessary arrangements for completion of the work by others.

4. Adjustments. If, after notice of termination for failure to perform, it is determined by CMA that CONSULTANT had not so failed and CMA nonetheless desires to terminate the AGREEMENT, the termination shall be deemed to have been effected for the convenience of CMA. In such event, adjustment shall be made as provided in **Article I, Section B, paragraph 1.**

5. Rights and Remedies. The rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

6. Waivers. CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CMA's termination for convenience as provided in **Article I, Section B, paragraph 1**, except for justifiable costs of termination, including, but not limited to, subcontract termination costs as mutually agreed by CMA and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES.

1. Change Order. CMA's representative may make changes in or additions to the Scope of Services under the AGREEMENT if such changes are agreed to by CONSULTANT, which agreement shall not be unreasonably withheld, through a written Change Order which does not

modify the overall purpose, term or compensation provisions of the AGREEMENT. No changes in the Scope of Work shall cause an increase in cost to CMA unless the change is approved in advance by a written Change Order.

2. Extra Work. At any time during the term of the AGREEMENT, CMA may order extra work to be performed by CONSULTANT. Extra work is defined as work which was not anticipated and/or contained in the AGREEMENT and which is determined by CMA to be necessary for the PROJECT. Necessary changes in the description of the Scope of Services, equitable adjustments in allowable costs, fixed fee, maximum price, term and schedule required by the Extra Work Order shall be agreed upon by the parties and incorporated herein through the execution of a written amendment to this AGREEMENT. CONSULTANT shall not perform any work or incur any costs pursuant to any Extra Work Order without prior approval by CMA. CONSULTANT's compensation shall be adjusted due to an Extra Work Order only if it has an impact on costs or terms of the AGREEMENT.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY.

1. Documents. Except as noted below, deliverables prepared by CONSULTANT under the AGREEMENT, such as plans, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of CMA upon completion of the term of this AGREEMENT whether or not the PROJECT is completed. CMA shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of CMA, and provided that CMA shall indemnify CONSULTANT against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT, and for deliverables that have been changed without CONSULTANT's written approval. All documents shall be provided in both written and electronic format.

2. Confidentiality. All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT by or on behalf of CMA in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CMA, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or becomes generally

known to the related industry, shall be deemed confidential. CONSULTANT shall not use CMA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of CMA. CONSULTANT may use project technical information at will in the demonstration of expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with CMA's prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS.

1. Consultant. In the performance of the services to be provided hereunder, CONSULTANT is an independent consultant and is not an employee, agent or other representative of CMA.

2. Assignment or Transfer. Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CMA.

F. INDEMNIFICATION.

1. Duties. CONSULTANT represents and maintains that it is skilled in the technical practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CMA expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. Responsibilities. CONSULTANT agrees to defend, protect, indemnify and hold harmless CMA, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively "Claims") to the extent arising out of or resulting from any negligent acts, errors or omissions of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CMA is found by a court or arbitrator to be partially liable for a Claim, CMA shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share liability.

CMA shall provide CONSULTANT an opportunity to cure, at CONSULTANT's expense, all errors and omissions, which may be disclosed during the review of the services performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CMA and CONSULTANT shall pay all costs thereof.

It shall be the responsibility of CONSULTANT to provide the basic insurance requirements indicated in **Section G**, below.

G. INSURANCE.

1. Comprehensive Liability. CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability sufficient cover not less than \$1,000,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for Property Damage and Automobile Liability Insurance with limits not less than \$250,000.00 per person and \$500,000.00 per occurrence for property damage. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall add CMA, its officers, employees, agents, and, if applicable other permitting agencies as identified by CMA, while acting within the scope of this AGREEMENT, as additional insureds. Such insurance shall include the following:

- a.** All operations including use of all vehicles.
- b.** Blanket contractual liability on all written contracts, including this AGREEMENT.
- c.** Personal injury (in lieu of, or in addition to, bodily injury).
- d.** Use of watercraft, where applicable.

Subconsultants of CONSULTANT shall provide evidence of their own Commercial or Comprehensive General Liability Insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts, is unable to meet the insurance specifications provided in this **Section G, paragraph 1**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

2. Errors and Omissions. In addition to the requirements of **Article I, Section G, paragraph 1** above, CONSULTANT shall carry professional liability insurance for errors and omissions in an amount not less than \$1,000,000. Such insurance shall include the following:

a. A deductible or self-insured retention is permissible on this policy, providing that such deductible or self-insured retention shall not exceed \$50,000 per occurrence.

b. Said policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.

c. Subconsultants of CONSULTANT providing services of a professional nature, shall provide evidence of their own professional liability insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts is unable to meet the professional liability insurance requirements provided in this **Section G, paragraph 2**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to modify the professional liability requirements for such subconsultant.

3. Worker's Compensation. CONSULTANT shall carry Worker's Compensation Insurance as required by California Law, covering all work performed by CONSULTANT under the AGREEMENT, and all of CONSULTANT's personnel performing services under the AGREEMENT.

4. Certificates. Insurance certificates evidencing the policies described in this **Article I, Section G** are to be furnished to CMA and provide for not less than sixty (60) days prior written notice to CMA of any cancellation.

H. PROHIBITED INTEREST.

1. Solicitation. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or

making the AGREEMENT. For breach of violation of this warranty, CMA shall have the right to rescind the AGREEMENT without liability.

2. Conflict of Interest. CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CMA, during his/her tenure or for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. Conflict of Employment. Employment by CONSULTANT of any current officer, executive director or other employee of CMA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one year after leaving office or employment, no officer, executive director or other employee of CMA shall, for compensation, act as agent or attorney or otherwise represent CONSULTANT by making any formal or informal appearance by making any oral or written communication before CMA, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. AFFIRMATIVE ACTION AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM.

1. In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

2. To the extent applicable, CONSULTANT will comply with CMA's Disadvantaged Business Enterprise (DBE) Program.

J. NOTIFICATION.

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, postage prepaid and addressed as follows:

CONSULTANT:

ATTN: (name)
(address)
(city), CA (zip)

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

ATTN: Dennis Fay
Executive Director
1333 Broadway, Suite 220
Oakland, CA 94612-1918

K. AUDIT OF BOOKS AND RECORDS.

CONSULTANT shall make available to CMA, its authorized agents (including but not limited to representatives of the state and federal governments), officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CMA, and shall furnish to CMA, its agents, and employees, such other evidence or information as CMA may require with respect to any such expense or disbursement charged by CONSULTANT.

The records described in this Section shall be retained by CONSULTANT and made available for inspection by CMA for a period of three (3) years after this AGREEMENT is terminated. The audit to determine final compensation will be accomplished by CMA within one year after completion of the PROJECT.

L. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding.

ARTICLE II - SCHEDULE

A. SCHEDULE OF WORK.

CONSULTANT shall conform with the schedule set forth in **Appendix C**, “Milestone Schedule,” attached hereto and by this reference incorporated herein, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT will prepare a revised schedule for review and approval by CMA. When a revised schedule has been submitted to and approved by CMA, it will be substituted for **Appendix C** and will become a part of this AGREEMENT. CONSULTANT is responsible for reporting in a prompt and timely manner whenever it appears the established work schedule will not be met, whether or not the reasons for anticipated delay are within CONSULTANT’s control.

B. REPORTING.

Monthly progress reports in a form acceptable to CMA, which describe work accomplished, shall be submitted with CONSULTANT’s monthly billings. CMA agrees to respond to CONSULTANT’s draft report submissions in accordance with the Schedule of Work.

C. DELAY.

Neither party hereto shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to the “Milestone Schedule”, to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT’s services be delayed by any mutually agreed upon excusable cause, CONSULTANT’s schedule for completion of tasks affected by such delay shall be extended as agreed to by CMA. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CMA resulting from such delay. Excusable Delays may include, but are not limited to, acts of God or of the public enemy, acts or failures to act of other agencies or CMA (in either their sovereign or contractual capacity), embargoes, and unusually severe weather. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY.

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CMA within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might,

under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III – COMPENSATION/PAYMENT

A. INVOICES AND TIME OF PAYMENT.

1. For all services described in **Article I** and **Appendix A**, payment is due within thirty (30) days after receipt of billing of the amount due for all services rendered during the month, except as otherwise provided in this **Section A**. Payment for service will represent the value of the completed scope of work as measured by expended costs to date.

2. CMA shall withhold ten percent (10%) of each progress payment referred to in **paragraph 1** above. *[Delete this paragraph if not applicable to this contract]*

3. If CMA disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 150% of the disputed amount pending resolution of the dispute. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis, CMA shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

4. CONSULTANT agrees that within twenty (20) days of receipt of payment from CMA, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties.

5. The format of payment invoices shall be as mutually agreed upon by CONSULTANT and CMA.

6. CMA may, on occasion, request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

7. Upon CMA's Final Acceptance pursuant to **Article I, Section A, paragraph 20**, CONSULTANT shall submit a final invoice to CMA and request final retention payment. CMA shall make final retention payment to CONSULTANT within 45 days of receipt of billing of the

amount due. Final Payment shall be subject to the provisions of **paragraphs 1 and 3** above with regard to CMA's right to withhold disputed payments, CONSULTANT's rights to 1.5% payment on wrongfully withheld or untimely payment, any prevailing party's reasonable legal fees and costs and payments to subconsultants.

8. CONSULTANT agrees that the cost principles set forth in Title 48 CFR, Chapter 1, Part 31 (Cost Principles and Procedures) shall be used to determine the allowability of individual cost items. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under these cost principles are subject to repayment by CONSULTANT to CMA.

9. CONSULTANT agrees to comply with federal procedures in accordance with Title 49 CFR, Part 18 (Uniform Administrative Requirements for Grants and Agreements with States and Local Governments).

10. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of **paragraphs 8 and 9** above shall apply to said subconsultant.

B. SUSPENSION OF WORK.

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CMA's use of any of CONSULTANT's professional service work products furnished under this AGREEMENT.

ARTICLE IV - OBLIGATIONS OF CONSULTANT

A. AUTHORIZATION TO PROCEED.

CONSULTANT will not begin work on any of the services described in **Article I** until CMA directs it in writing to proceed.

ARTICLE V – OBLIGATIONS OF CMA

A. CMA-FURNISHED DATA.

CMA will provide to CONSULTANT all relevant technical data in CMA's possession, including, but not limited to, previous reports, /maps, surveys, borings,/ and all other information relating to CONSULTANT's services on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CMA.

B. ACCESS TO FACILITIES.

CMA will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of its service.

C. TIMELY REVIEW.

CMA will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CMA deems appropriate; and render, in writing, decisions required of CMA in a timely manner.

D. PROMPT NOTICE.

CMA will give prompt written notice to CONSULTANT whenever CMA observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of CONSULTANT or its subconsultants.

ARTICLE VI - APPENDICES, SCHEDULES AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK

Appendix B: CONSULTANT AND SUBCONSULTANT FIRMS KEY PROJECT
PERSONNEL

Appendix C: MILESTONE SCHEDULE

Appendix D: PROJECT COST PROPOSAL

IN WITNESS WHEREOF, CMA has by order caused the AGREEMENT to be subscribed by the binding authority of CMA and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

By: _____

Name: _____

Its: _____

Date: _____

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

By: _____

Dennis Fay, Executive Director

Date: _____

Recommended For Approval

By: _____

Name / Title

Approved as to form and legality:

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

APPENDIX A
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

DETAILED SCOPE OF WORK

APPENDIX B
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

CONSULTANT AND SUBCONSULTANT
FIRMS KEY PROJECT PERSONNEL

APPENDIX C
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

MILESTONE SCHEDULE

APPENDIX D
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

PROJECT COST PROPOSAL